

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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CHRISTOPHER A. HENRY,

Plaintiff,

-v-

C.O. MILLER, C.O. JOSEPH GRASSO, and
C.O. LORENZO COLANGELO,

Defendants.

11 Civ. 1273 (PAE) (HBP)

OPINION & ORDER

X

PAUL A. ENGELMAYER, District Judge:

Pro se plaintiff Christopher Henry brings this action under 42 U.S.C. § 1983 alleging that several correctional officers at Rikers Island physically assaulted and injured him. Defendants have moved to dismiss Henry's Third Amended Complaint for failure to prosecute and for failure to comply with a discovery order. Before the Court is the August 14, 2018 Report and Recommendation of the Hon. Henry Pitman, United States Magistrate Judge, recommending that the Court deny defendants' motion to dismiss. Dkt. 142 ("Report"). The Court incorporates by reference the summary of the facts provided in the Report. *See* Report at 2–7. For the following reasons, the Court adopts this recommendation.

DISCUSSION

In reviewing a Report and Recommendation, a district court "may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge." 28 U.S.C. § 636(b)(1)(C). "To accept those portions of the report to which no timely objection has been made, a district court need only satisfy itself that there is no clear error on the face of the record." *Ruiz v. Citibank, N.A.*, No. 10 Civ. 5950 (KPF), 2014 WL 4635575, at *2 (S.D.N.Y.

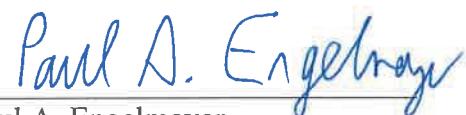
Aug. 19, 2014) (quoting *King v. Greiner*, No. 02 Civ. 5810 (DLC), 2009 WL 2001439, at *4 (S.D.N.Y. July 8, 2009)); *see also, e.g.*, *Wilds v. United Parcel Serv.*, 262 F. Supp. 2d 163, 169 (S.D.N.Y. 2003).

As neither party has submitted objections to the Report, review for clear error is appropriate. Careful review of Judge Pitman's thorough and well-reasoned Report reveals no facial error in its conclusions; the Report is therefore adopted in its entirety. Because the Report explicitly states that "failure to object within fourteen (14) days will result in a waiver of objections and will preclude appellate review," Report at 10, both parties' failure to object operates as a waiver of appellate review. *See Cайдор v. Онондага Стэйт*, 517 F.3d 601, 604 (2d Cir. 2008) (citing *Small v. Sec'y of Health & Human Servs.*, 892 F.2d 15, 16 (2d Cir. 1989) (per curiam)).

CONCLUSION

For the foregoing reasons, the Court denies defendants' motion to dismiss Henry's Third Amended Complaint. The Court respectfully directs the Clerk to mail a copy of this decision to plaintiff at the address on file.

SO ORDERED.



Paul A. Engelmayer
United States District Judge

Dated: August 30, 2018
New York, New York